

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GARY W. WALTERS,

Plaintiff,

v.

MICHAEL P. VALLANI,

Defendant.

Case No. 2:09-CV-00505-KJD-GWF

ORDER

Currently before the Court is Defendant Michael Vallani's Motion to Dismiss (#3). Plaintiff filed a Response (#6). Subsequently, Plaintiff filed a Motion to Amend/Correct Complaint (#7), and a Motion for a Court Ordered Federal Grand Jury Inquiry (#8). Defendant filed a Motion to Strike (#9) Plaintiff's Motion for a Court Ordered Federal Grand Jury Inquiry, to which Plaintiff filed a Response (#10). On October 30, 2009, Magistrate Judge George Foley Jr. issued an Order and Findings and Recommendation (#14) granting Plaintiff's Motion to Amend Complaint, dismissing Plaintiff's Amended Complaint without prejudice, for failure to state a claim upon which relief can be granted, and giving Plaintiff thirty (30) days in which to file his second amended complaint if he was able to correct the noted deficiencies. (See Order and Findings at 9.) The Magistrate Judge also denied Plaintiff's Motion for a Court Ordered Grand Jury Inquiry, and Defendant's Motion to Strike. Additionally, the Magistrate Judge Recommended that Defendants Michael P. Vallani, Doe

1 Assistant Clark County District Attorneys and the State of Nevada be dismissed with prejudice due
2 to Plaintiff's failure to state a claim upon which relief may be granted, and due to Defendants'
3 immunity from civil rights claims under 42 U.S.C. § 1983. Additionally, the Magistrate Judge
4 recommended that Defendant Michael P. Vallani's Motion to Dismiss be denied as moot. (*Id.*)

5 Subsequent to the issuance of the Magistrate Judge's Order and Findings, Plaintiff filed a
6 Motion to Stay (#16). The Court granted Plaintiff's Motion in part, denying his request for a stay,
7 but alternatively granting him an extension of time in which to file objections to the Magistrate
8 Judge's Findings and Recommendations pursuant to Local Rule IB 3-2. Plaintiff subsequently filed
9 a Reply and Objections (#20) to the Magistrate Judge's Findings and Recommendation. For the
10 reasons stated herein, the Court upholds the Magistrate Judge's Findings and Recommendation in
11 full.

12 **I. Discussion**

13 According to Local Rule IB 3-2, the district judge makes a *de novo* determination of those
14 portions of the specified findings and recommendations to which objections have been made. In this
15 case, Plaintiff objects generally to the Magistrate Judge's Findings and Recommendations, stating
16 that the Court is required to construe all allegations favorably to the pleader, and seeks that the Court
17 review the arguments and authority raised in his Response to Defendant's dispositive Motion.
18 (*See* Objections at 2.) Plaintiff avers *inter alia* that his Amended Complaint should not be
19 dismissed, as each count asserts due process violations, and that he has properly asserted all claims
20 necessary to overcome Defendants' immunity defense. *Id.* Specifically, Plaintiff's Objection raises
21 the argument that Defendants are not immune from liability for alleged unconstitutional behavior that
22 was part of a regulation or decision officially adopted by the agency. *Id.* at 3. Plaintiff neglects
23 however, to provide any evidence of a policy or regulation that was officially adopted by any state
24 agency or actor, or that caused Plaintiff's alleged harm.

25 Moreover, as mentioned above, upon screening the Plaintiff's Amended Complaint pursuant
26 to 28 U.S.C. § 1915A, the Magistrate Judge found the Complaint failed to state a claim for relief

1 under Rule 12(b)(6), and failed due to Defendants' immunity from civil rights claims under 42
2 U.S.C. § 1983. Accordingly, the Amended Complaint was dismissed, without prejudice. The Court
3 has reviewed the Magistrate Judge's Order, Findings, and Recommendation, and upholds his
4 determination in full. Plaintiff's case was dismissed without prejudice, and Plaintiff was allowed
5 thirty days in which to file a second amended complaint correcting the noted deficiencies. Plaintiff
6 was warned that failure to do so would result in dismissal of his case. To date, Plaintiff has failed to
7 file a second amended complaint, seeking instead to file general objections to the Magistrate Judge's
8 findings and seeking that the Court revisit the arguments set forth in his Response to Defendant
9 Vallani's dispositive Motion.

10 Accordingly, **IT IS HEREBY ORDERED** that the Magistrate Judge's Report and
11 Recommendation (#14) is upheld in full.

12 **IT IS FURTHER ORDERED** that Plaintiff's action is dismissed.

13 **IT IS FURTHER ORDERED** that Defendant Michael Vallani's Motion to Dismiss (#3) is
14 denied as moot.

15
16 DATED this 16th day of February 2010.

17
18 

19 _____
20 Kent J. Dawson
21 United States District Judge
22
23
24
25
26